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09/270,141	03/16/1999	GARY D. FOSTER	SMQ-011	2096
959	7590	01/05/2004	EXAMINER	
LAHIVE & COCKFIELD, LLP. 28 STATE STREET BOSTON, MA 02109			INGBERG, TODD D	
			ART UNIT	PAPER NUMBER
			2124	9

DATE MAILED: 01/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/270,141

Applicant(s)

FOSTER, GARY D. SL

Examiner

Todd Ingberg

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 8-12, 14-20, 22, 23, 30-34 and 38-52 is/are pending in the application.
- 4a) Of the above claim(s) 6, 7, 13, 21, 24-29 and 35-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-12, 14-20, 22, 23, 30-34 and 38-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

Post Election from Restriction

Claims 1 - 5, 8-12, 14- 20, 22-23, 30-34, 38- 52 have been examined.

Claims 1, 4, 5, 9, 14, 17, 20, 38, 43 have been amended.

Claims 6-7, 13, 21, 24-29, 35-37 have been canceled.

Previous action stated claims 30 - 34, 47 - 52 and claim 13 (a dependent) contained allowable subject matter. The allowability of these claims has been revoked this office action is non final.

Specification

1. The new title of the invention has been entered. the issue of appropriate title will be revisited at time of allowance. The claimed invention is directed toward the enabling technology of newsgroups .

Claim Rejections - 35 U.S.C. § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 14 and 17 (and dependent claims 2-5, 8, 15,16,18 and 19) are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term **"programmatically "** is indefinite. The meaning must be clearly and concisely explained or the limitation deleted.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 - 5, 8-12, 14-20, 22-23, 38-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over the commercial product **Netscape** version 2 as documented in the manual, "Using Netscape 2", Special Edition written by Mark R. Brown and published by Que 1995 in view of USPN #6,546,488 **Dillon** et al filed September 22, 1997.

NOTE: The entire interpretation of Netscape can not be formulated with a single manual. Only this manual on the product is under consideration. In event of allowance other references on Netscape including the product can be used in future action.

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NOTE: The following limitations “ a patch for a computer program, a document, and a hypertext markup language (HTML) file”, are treated as data and carry no patentable weight.

NOTE: The Examiner could not find a reference proving the Netscape “.newsrsc file” in a Unix system is stored on the client side and is the file that contains the USENET Newsgroups the user has subscribed.

Claim 1

Netscape teaches the use of news groups in Chapter 15 (pages 384 - 397)of Using Netscape 2 in a distributed system having a publishing master and a client system (Netscape , page 377 , UseNet is a form of a publishing master), a method comprising: providing at the publishing master an index of available packages for loading (Netscape, page 384, Tables are examples of newsgroups to select from); accessing the index on behalf of the client system to identify at least one selected package (Netscape, page 384, Tables are examples of newsgroups to select from for loading at the client system; and loading the selected package at the client system (Netscape, page 385, The groups subscribes to (dotted line on interface) are listed as well as the whole list and the display of downloaded articles). Netscape does not explicitly teach the storing of the groups subscribed to on the client computer It is Dillon who teaches the storing at the client system data that identifies packages to which the client system subscribes; programmatically said selecting using the information the identifying packages that may be loaded at the client system, and the data that identifies packages to which the client system subscribes (Dillon, Abstract, teaches the storing subscription information local to the receiver (client). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to store

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subscription information on the client because the local copy serves as a personal filter (Dillon, Abstract).

Claim 2

The method of claim 1 wherein the selected package is loaded without registration of the client system with the publishing master. (Netscape, page 389, articles displayed prior to subscribing).

Claim 3

The method of claim 1 wherein the publishing master is unaware of the loading of the selected package at the client system.

As per claim 1 – There is not reason why the publishing master should know the files are being loaded the operation is a pull not a push. The publishing master is not being updated.

Claim 4

The method of claim 1 wherein the selected package includes at least one of a patch for a computer program, a document, and a hypertext markup language (HTML) file.

The download of digital information is taught by the reference – the limitations are considered data and carry no patentable weight.

Claim 5

The method of claim 1, comprising the further step of storing the selected package at a repository that is separate from the publishing master, said package being retrieved from said repository prior to loading.

Interpreted as the list is a list of pointers (file names) which point to the actual container (repository). Netscape , page 385, the article list is a list of file names).

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Claim 8

The method claim 1 wherein the publishing master is a web server.

The newsgroup as per claim 1 on the Internet is considered to be a web server.

Claim 9

Netscape teaches in a distributed system having a server and a client, a method comprising: storing at the server information identifying packages that may be installed at the client; storing at the client data that identifies packages to which the client subscribes; and using the information identifying packages that may be installed at the client and the data that identifies packages to which the client subscribes to determine which of the packages are to be installed at the client, said determining comprising generating a list of packages that may be installed at the client to which the client wants to describe and which have not already been installed at the client.

As per claim 1.

Claim 10

The method of claim 9 further comprising installing the determined packages at the client (**Netscape**, page 392, download a file).

Official Notice is taken that installing a downloaded file is grossly old and well known and part of the intended use. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to know how to install a downloaded file.

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Claim 11

The method of claim 9 further comprising providing data regarding what packages have already been installed at the client and using the data regarding what packages have already been installed in determining which of the packages are to be installed at the client.

(**Netscape**, page 388, after downloading articles once the next download does not download all files again).

Claim 12

The method of claim 9 wherein the information identifying packages that may be installed at the client includes information identifying names and version of the packages (**Netscape**, page 385, Article list see Subject where the name and version can be listed).

Claim 14

Netscape teaches in a computer network having a server (**Netscape**, Internet web server) and a client (**Netscape**, User of Usenet) , a method comprising the computer-implemented steps of:

- (a) providing at the server data regarding what packages are available for installation;
- (b) providing at the client an itemization of packages to which the client subscribes; and
- (c) with the client, repeating multiple times the following steps:
 - (i) programmatically accessing the data regarding what packages are available and accessing the itemization of packages to which the client subscribes to determine what selected packages to install; and
 - (ii) installing selected packages at the client (**Netscape**, page 385 - 386, the subscribing to the different newsgroups).

Netscape does not explicitly teach the storing of the groups subscribed to on the client computer. It is Dillon who teaches the client subscribes (Dillon, Abstract, teaches the client subscribes local to the receiver (client). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to store subscription information on the client because the local copy serves as a personal filter (Dillon, Abstract).

Claim 15

The method of claim 14 wherein steps (c)(i) and (c)(ii) are repeated at periodic intervals. Netscape and Dillon do not teach the use of a utility to schedule activities. The well known utility "CRON" is taught in "Scheduled Activity" article from ACM 1996 that teaches the cron utility to schedule events to be performed at regular intervals. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to combine Netscape and Dillon with the scheduling of cron, because periodic interval downloads at the client provides timely updates in the same manner as Net News Transfer Protocol Daemon (NNTPD) provides updates to the sever which updates the newsgroups.

Claim 16

The method of claim 14 wherein steps (c)(i) and (c)(ii) are repeated upon demand by a user. (As per claim 14 the manual interaction on page 385 of Netscape)

Claim 17

Netscape teaches in a distributed system having a publishing master (Netscape, page 385, list of possible newsgroups), at least one repository for holding packages (Ability to download files from newsgroups as per claim 1) and multiple client computer systems (Clients on Internet as per claim 1), a method comprising:

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providing a package index at the publishing master(As per above) , wherein the package index identifies names and versions of packages stored on the repository (Netscape, page 385, Article list see Subject where the name and version can be listed)

Netscape does not explicitly teach providing a subscription list at each client system, wherein each subscription list identifies the packages to which the client system subscribes; and. for each client system, at periodic intervals

(i) programmatically identifying selected packages to be loaded by referencing the package index and the subscription list) as per claim 1); and

(ii) loading the selected packages at the client system. It is Dillon who teaches the client subscribes (Dillon, Abstract, teaches the client subscribes local to the receiver (client). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to store subscription information on the client because the local copy serves as a personal filter (Dillon, Abstract).

Netscape and Dillon do not teach the use of a utility to schedule activities. The well known utility "CRON" is taught in "Scheduled Activity" article from ACM 1996 that teaches the cron utility to schedule events to be performed at regular intervals. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to combine Netscape and Dillon with the scheduling of cron, because periodic interval downloads at the client provides timely updates in the same manner as Net News Transfer Protocol Daemon (NNTPD) provides updates to the sever which updates the newsgroups.

Claim 18

The method of claim 17 wherein at least one of the packages that is loaded includes at least one patch.

Examiner's Response

The download of files as per claim 1 and the actual download is data (patch is not given patentable weight).

Claim 19

The method of claim 18 wherein at least one of the packages that is loaded includes multiple patches.

Examiner's Response

The download of files as per claim 1 and the actual download is data (patch is not given patentable weight).

Claim 20

Netscape teaches a distributed system, comprising: a publishing master holding an index of packages that are available for installation(Netscape, page 385, list of possible newsgroups); a repository for storing the packages that are available for installation; and a client computer system for identifying selected packages among the packages indexed by the index of packages, obtaining the selected packages from the repository (As per claim 5) and installing the selected packages at the client computer system (**Netscape**, page 385, list of possible newsgroups)

Netscape does not explicitly teach said identifying using information from a client-maintained subscription list of packages to which the client system subscribes. . It is Dillon who teaches the client subscribes (Dillon, Abstract, teaches the client subscribes local to the receiver (client).

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to store subscription information on the client because the local copy serves as a personal filter (Dillon, Abstract).

Claim 22

The distributed computer system of claim 20 further comprising an additional repository for storing at least a portion of the packages that are available for installation. As per claim 20 and different newsgroups can have there own repositories.

Claim 23

The distributed computer system of claim 20 further comprising an additional client computer system for identifying a subset of the packages indexed by the index of packages, obtaining the subset of packages from repository and installing the subset of packages at the additional client computer system. As per claim 1 the ability to select specific newsgroups to subscribe to.

Claim 38

Netscape teaches in a distributed system having a publishing master with an index of packages available for installation and a client system (as per claim 1), a method performed by the client system comprising: requesting at least a portion of the index from the publishing master (as in selecting the name of the news group depicted in claim 1); receiving at least a portion of the index from the publishing master in response to the request; processing the received portion of the index to identify a selected package to install; and obtaining a copy of the selected package. (as per claim 1), **Netscape** does not explicitly teach identifying packages that are already installed at the client said processing using information about the identified packages already installed on the client system. It is Dillon who teaches the client subscribes (Dillon, Abstract, teaches the

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client subscribes local to the receiver (client). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to store subscription information on the client because the local copy serves as a personal filter (Dillon, Abstract).

Claim 39

The method of claim 38 further comprising the step of installing the package at the client system.

As per claim 10.

Claim 40

The method of claim 38 wherein the selected package is obtained without registration of the client system with the publishing master. As per claim 2.

Claim 41

The method of claim 38 wherein the selected package contains a patch.

As per claim 4.

Claim 42

The method of claim 38 wherein the selected package contains a document.

As per claim 4 (document download treated as data).

Claim 43

Netscape teaches in a distributed system having a publishing master having an index of packages available for installation and a client system, a computer-readable medium holding computer-executable instructions for performing a method performed by the client system comprising: requesting at least a portion of the index from the publishing master; receiving at least a portion of the index from the publishing master in response to the request; processing the received portion of the index to identify a selected package to install; and obtaining a copy of the

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selected package (as per claim 1) **Netscape** does not explicitly teach identifying packages that are already installed at the client said processing using information about the identified packages already installed on the client system. It is Dillon who teaches the client subscribes (Dillon, Abstract, teaches the client subscribes local to the receiver (client). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to store subscription information on the client because the local copy serves as a personal filter (Dillon, Abstract).

Claim 44

The storage medium of claim 43 wherein the selected package is obtained without registration of the client system with the publishing master. As per claim 2.

Claim 45

The storage medium of claim 43 wherein the selected package contains a patch. As per claim 4.

Claim 46

The storage medium of claim 41 wherein the selected package contains a document. As per claim 4.

Claim 47

Netscape teaches in a distributed system having storage holding packages that are available for downloading and a client, a method performed by the client, comprising: obtaining data that identifies packages that are available for downloading; identifying packages to which the client subscribes; identifying packages that are already downloaded to the client; downloading from the storage selected packages at the client, wherein the selected packages are those which are identified for installation, **Netscape** does not explicitly teach identified as packages to which the client subscribes and identified as not yet being downloaded to the client. It is Dillon who

teaches the client subscribes (Dillon, Abstract, teaches the client subscribes local to the receiver (client). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to store subscription information on the client because the local copy serves as a personal filter (Dillon, Abstract).

Claim 48

The method of claim 47 wherein at least one of the packages that is downloaded contains a patch. As per claim 4.

Claim 49

The method of claim 47 wherein at least one of the packages that is downloaded contains a hypertext document. . (As per claim 4 hypertext document treated as data).

Claim 50

Netscape teaches in a distributed system having storage holding packages that are available for downloading (As per claim 1) and a client, a computer-readable medium containing computer-executable instructions for performing a method performed by the client, comprising: obtaining data that identifies packages that are available for downloading ; identifying packages to which the client subscribes; identifying packages that are already downloaded to the client **Netscape** does not explicitly teach ; downloading from the storage selected packages at the client, wherein the selected packages are those which are identified for installation, identified as packages to which the client subscribes and identified as not yet being downloaded to the client. It is Dillon who teaches the client subscribes (Dillon, Abstract, teaches the client subscribes local to the receiver (client). Therefore, it would have been obvious to one of ordinary skill in the art at

the time of invention to store subscription information on the client because the local copy serves as a personal filter (Dillon, Abstract).

Claim 51

The storage medium of claim 50 wherein at least one of the packages that is downloaded contains a patch. As per claim 4.

Claim 52

The storage medium of claim 50 wherein at least one of the packages that is downloaded contains a hypertext document. (As per claim 4 hypertext document treated as data).

Conclusion

6. Much of the claimed invention reads on well known field of newsgroups supported by products, such as Netscape. The claims read on the enabling technology of Internet newsgroups and not the inventive concept of "*optimizing minimal computational and memory overhead*". The knowledge of Internet newsgroups is deemed base knowledge for one of ordinary skill in the art prior to the time of invention.

1. Many of the claim limitations are directed toward data as opposed to the ability transfer data. The invention is directed toward the ability to download data. Type of data transferred was not given patentable weight it is merely data. The transfer of different types of data is old and well known and the transfer of a type of data was not demonstrated to be new or non obvious.
2. The Registry is old and well known for Microsoft products. Applicant's response we significant on the viewing of the registry as only part of the operating system. The registry is well known to record installed software and in many products contain subscription/ update

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information. Applicant's remarks are clear that their invention does not intend to use the registry but the claim language as not fully encompassed the limitations to be within the Subscription system.

3. Applicant has made statements for the record distancing themselves from having the invention interacting with the system registry. This technical limitation will be considered absolute.

Correspondence Information

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Todd Ingberg** whose telephone number is (703) 305-9775. The examiner can normally be reached during the following hours:

Monday	Tuesday	Wednesday	Thursday	Friday
6:15 – 1:30	6:15- 3:45	6:15 – 4:45	6:15-3:45	6:15-130

This schedule began December 1, 2003 and is subject to change.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kakali Chaki** can be reached on (703) 305-9662. Please, note that as of August 4, 2003 the **FAX number** changed for the organization where this application or proceeding is assigned is **(703) 872-9306**.

Also, be advised the United States Patent Office **new address** is

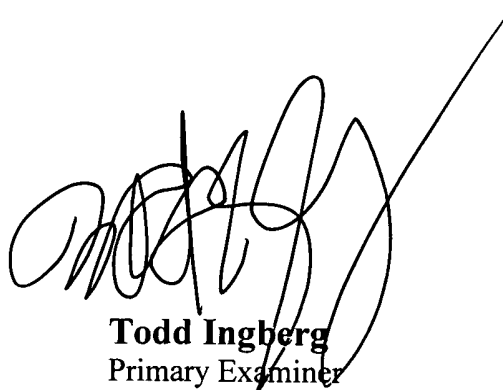
Post Office Box 1450

Alexandria, Virginia 22313-1450

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9700.

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A handwritten signature in black ink, appearing to read 'Todd Ingberg', is written over the printed name. The signature is stylized with loops and a long horizontal stroke extending to the right.

Todd Ingberg
Primary Examiner
Art Unit 2124
December 24, 2003